

**COUNTY OF LOUDOUN**  
**Department of Planning**

**# 4**

**Memorandum**

**DATE:** May 11, 2010

**TO:** Loudoun County Board of Supervisors

**FROM:** Julie Pastor, Director, Planning Department  
Pat Giglio, Project Manager, Planning Department

**SUBJECT:** **May 19, 2010 Board Transportation and Land Use Committee Meeting**  
**SPEX 2009-0011, SPEX 2009-0029 & CMPT 2009-0002 – Potomac Radio**

**RECOMMENDATIONS**

**Planning Commission Recommendations**

The Planning Commission at their April 21, 2010 Work Session voted 6-3 (Commissioner Klancher, Robinson and Maio opposed) to approve CMPT 2009-0002 and forward the application to the Board of Supervisors for ratification based on the attached findings (Attachment 4). The Planning Commission also voted 6-3 (Commissioner Klancher, Robinson and Maio opposed) to recommend approval of SPEX 2009-0029, Potomac Radio subject to the Conditions of Approval dated March 23, 2010, which were revised to clarify Condition #7 pertaining to cessation of use, and based on the Findings contained in this Staff Report (Attachment 4 & 5). The Planning Commission did not review or provide advisory comments on SPEX 2009-00011 for the proposed use; which pursuant to the 1972 Zoning Ordinance requires only Board of Supervisors action.

**Staff Recommendations**

Staff cannot support these applications due to inconsistencies with the Keynote Employment land use policies and environmental policies for uses within the floodplain as defined by the Revised General Plan. However, should the Board of Supervisors approve the applications, the applicant is in agreement with the Conditions of Approval which have been reviewed and approved by the County Attorney.

**BACKGROUND**

Potomac Radio, LLC, of Falls Church, Virginia has submitted an application for two Special Exceptions and Commission Permit approval to permit a “public utility, communications and transmission” (AM radio transmitter) within the FOD (Floodplain Overlay District) and PD-IP (Planned Development-Industrial Park) zoning district subject to the 1972 Zoning Ordinance. The subject site, a 7.5 acre lease area, is located in the northwest corner of the property which is owned by Loudoun Water and operated as the Broad Run Water Reclamation at 44771 Loudoun Water Way, Ashburn. The proposed AM Radio Transmitter on the subject site will consist of three (3) 195-foot self-supporting lattice towers with a buried grounding system consisting of 120 equally spaced copper wires extending in 200 foot radius around each tower. The radials which are the size of a pencil lead will be buried approximately one foot to four feet below ground level. A transmitter building (20’x25’), satellite dishes and auxiliary generator with an above ground natural gas fuel tank will be located in proximity to the proposed antenna arrays

near an existing gravel road. The proposed construction will require ground disturbing activities within the major floodplain as well as the removal of approximately two-acres of existing mixed bottomland and hardwood forest on the southern portion of the subject site (Attachment 2). The applicant has submitted a Planting Plan which proposes the planting of pine seedlings (loblolly pine), shrubbery and native grasses between the radials of the buried grounding system to mitigate the impacts of the proposed construction within the floodplain.

The Board of Supervisors (BOS) held a public hearing on this application on May 10, 2010. Two members of the public spoke in opposition to the application based on concerns with the environmental impact of the proposed construction within the floodplain and the loss of existing riparian forests. The speakers also noted the potential impact to wildlife, specifically the Great Blue Heron Rookery and Nesting Area located on the east side of the Broad Run on the Kincora property. Six members of the public spoke in support of the application citing the importance of WAGE radio for providing local news and public service alerts/information. The Board of Supervisors in their discussions with staff and the applicant raised questions pertaining to flooding on the subject site, the precedent for constructing buildings within the floodplain and the overall environmental impact of the proposed construction within the floodplain. The Board concluded the hearing by voting 7-0-1-1 (Waters absent, Burk abstain) to forward the application to the Transportation and Land Use Committee for further discussion.

## **SUGGESTED MOTIONS**

1. I move that the Transportation and Land Use Committee forward CMPT 2009-0002 Potomac Radio to the Board of Supervisors for ratification, subject to the plat dated February, 2009, revised through March 2, 2010, prepared by Patton Harris Rust & Associates, pc, based on the Planning Commissions findings for approval in Attachment 5 and in accordance with the discussions of the May 19, 2010 Transportation and Land Use Committee meeting.

AND,

2. I move that the Transportation and Land Use Committee forward SPEX 2009-0011 and SPEX 2009-0029, Potomac Radio, to the Board of Supervisors with a recommendation of approval, subject to the plat dated February, 2009, revised through March 2, 2009 prepared by Patton Harris Rust & Associates, pc, subject to the Conditions of Approval dated April 21, 2010 in Attachment 5 and based on Planning Commissions findings for approval in Attachment 4 and in accordance with the discussions of the May 19, 2010 Transportation and Land Use Committee meeting.

OR

3. I move that the Transportation and Land Use Committee forward CMPT 2009-0002 Potomac Radio, to the Board of Supervisors with a recommendation for denial based on the attached Findings contained in Attachment 6.

AND,

4. I move that the Transportation and Land Use Committee forward SPEX 2009-0011 and SPEX 2009-0029 Potomac Radio, to the Board of Supervisors with a recommendation for denial based on the attached Findings contained in Attachment 6.

#### **ATTACHMENTS**

1. Vicinity Map
2. Environmental Feature Map
3. Issues Summary- May 10, 2010 Board of Supervisors Public Hearing
4. Planning Commissions Findings for Approval dated April 21, 2010
5. Conditions of Approval, dated April 21, 2010.
6. Findings for Denial

## VICINITY MAP



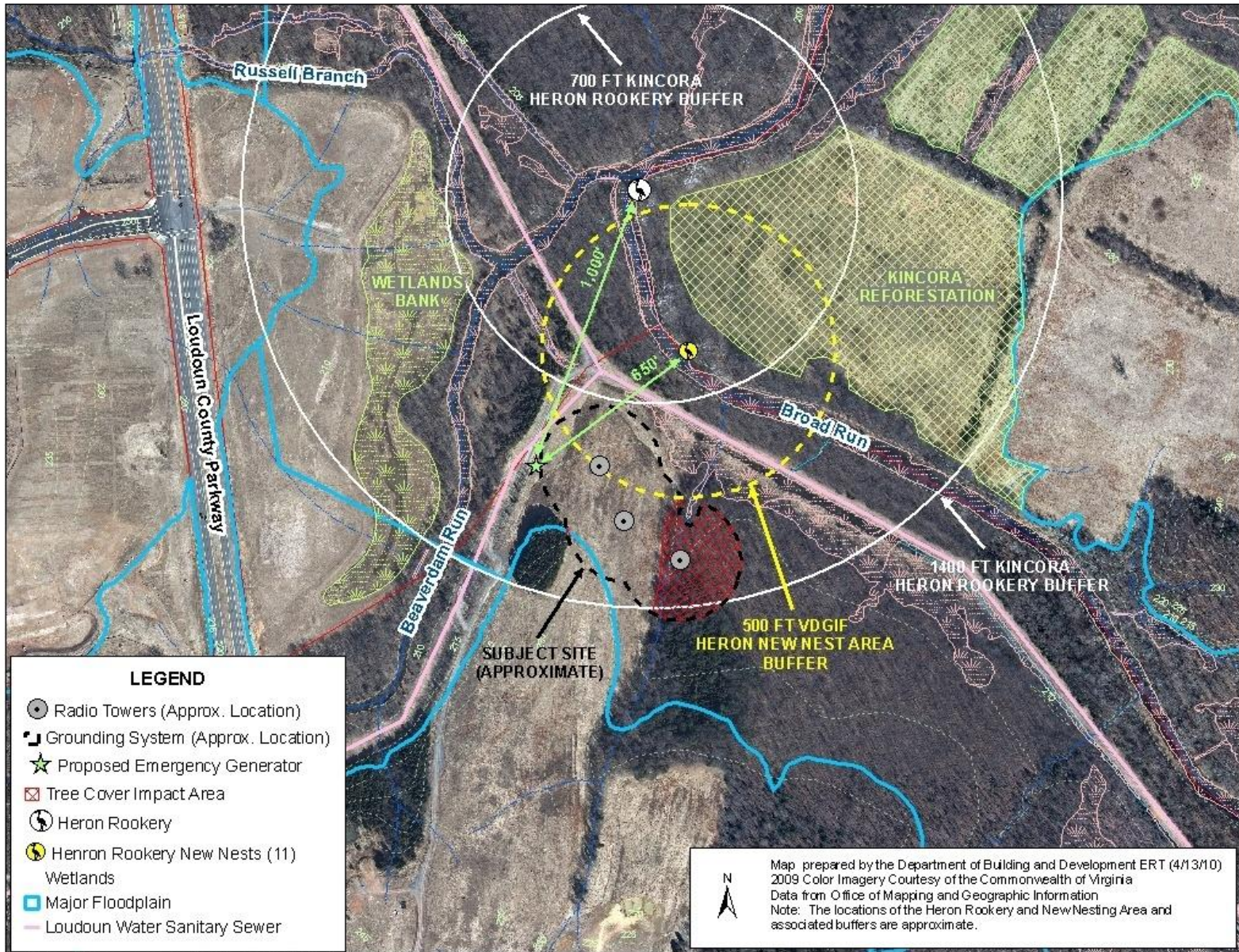
### Directions:

From Leesburg, take Route 7 east to Loudoun County Parkway. Follow Loudoun County Parkway south. Turn left into the first entrance onto the Loudoun Water Campus. Turn left on the first gravel road, proceed through the gate and follow the road down the hill to the subject site located in the northeast corner of the property west of the existing sewer corridor.

**ATTACHMENT 1**



## ENVIRONMENTAL FEATURES



## ATTACHMENT 2

## ISSUES SUMMARY- BOARD OF SUPERVISORS PUBLIC HEARING, MAY 10, 2010

The questions below summarize the environmental issues raised during the public hearing. The applicant has been provided these questions and will be prepared to address them at the committee meeting.

**1. Is the subject site located in an area prone to flooding?**

The subject site is in a unique geographic area at the confluence of the Broad Run with Beaverdam Run and Russell Branch. The 7.5 acre subject site, which is designated by the County as major floodplain, slopes gently from west to east and drains to the Broad Run. The subject site is bordered to the north by an existing gravel road and to the east by another gravel road associated with a sewer corridor (The Potomac Inceptor). These existing gravel roads are slightly elevated and separate the subject site from seasonal flooding and flow associated with the Broad Run and Beaverdam Run. However, the subject site is a seep area and because of its lower elevation ground water and surface water does collect on the site which experience periods where wet conditions and standing water may be present.

**2. What precedence exists within the County for constructing buildings within the floodplain?**

The policies of the Revised General Plan permit only a limited number of uses within stream corridors and the floodplain, including passive and active recreation, road crossings and bridges, utility corridors, pervious paths and trails, and agricultural activities (*Revised General Plan, Chapter 5, River and Stream Corridor Resources Policies, Policy 18*). The proposed AM Radio Transmitter is not one of the types of uses envisioned by the Plan to be located within the stream corridor and more specifically the major floodplain of Broad Run. The only buildings currently permitted within the floodplain are sewer pump stations which are associated with gravity feed systems and by design must be located at these low points along a sewer corridor.

**3. What is the overall environmental impact of the proposed construction within the floodplain?**

Construction of the proposed AM Radio Transmitter on the 7.5 acre subject site within the major floodplain of the Broad Run will impact elements of the Countywide Green Infrastructure. The proposed construction will require ground disturbing activities for the installation of the radials of the underground grounding system, concrete foundations for the lattice towers and construction of the transmitter building, as well as the removal of approximately two-acres of existing mixed bottomland and hardwood forest on the southern portion of the subject site. The proposed AM Radio Transmitter is not one of the types of uses envisioned by the Plan to be located within the floodplain. The environmental policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within the floodplain.

However, should the Board of Supervisors consider the application the applicant has provided a Planting Plan to mitigate potential impacts of the proposed construction within the floodplain and the loss of existing forest cover. The Planting Plan includes a proposal to plant loblolly pine seedlings and shrubs on the periphery site between the radials of the buried grounding system and to plant grasses and native plants near the center of the site where the spacing of the radial are much closer together. The applicant has also provided commitments through Conditions of approval to mitigate impacts on the adjacent Heron Rookery and to provide assurance that the Planting Plan will be maintained.

While staff appreciates the applicant's commitment to the environmental enhancement of the stream corridor and their plan to mitigate the potential environmental impacts associated with the proposed construction within the major floodplain, the policies of the Revised General Plan do not support the construction of this type of use within the floodplain.

<b>ATTACHMENT 3</b>
---------------------



## **PLANNING COMMISSION’S FINDINGS FOR APPROVAL – April 21, 2010**

### **Commission Permit and Special Exception**

1. The proposed AM Radio Transmitter provides a valuable and essential public service through the broadcast of emergency services which contributes to the general safety and welfare of the residents of Loudoun County.
2. The impact of the three proposed radio towers located within the floodplain is similar to the impacts associated with a utility corridor, which would be consistent with the Revised General Plan. The submitted Planting Plan enhances the floodplain with reforestation and mitigates the applications environmental impacts.
3. The Virginia Department of Game and Inland Fisheries has determined that the towers and noise from the generator will not have an adverse impact upon the heron rookery.

**ATTACHMENT 4**

## CONDITIONS OF APPROVAL – April 21, 2010

Should the Board of Supervisors wish to approve the application, staff recommends the following conditions of approval:

1. **Substantial Conformance** - This Special Exception to permit development of AM radio towers as a public utility within the floodplain shall be developed in substantial conformance with Sheets 1 of 4 and 3 of 4 (the “Special Exception Plat”) of the plan set entitled “Potomac Radio, Special Exception Plat/ Commission Permit Application” dated February 2009, revised through March 2, 2010, prepared by Patton Harris Rust & Associates, PC (the “Plans”), and incorporated herein by reference and the applicable provisions of the Loudoun County Zoning Ordinance. Approval of this application for Tax Map Number /80///4///A2/ (PIN# 041-37-4022) (the “Property”) shall not relieve the Applicant or the owners of the Property or any Lessee from the obligation to comply with and conform to any other Zoning Ordinance, Codified Ordinance, or applicable regulatory requirement.
2. **Riparian Planting Plan** - The Applicant shall install all the plant materials and trees in the amounts and sizes specified, at the general locations depicted on, and of a character consistent with, the “Planting Plan”, dated December 20, 2009 prepared by blueskies environmental associates, inc. of Richmond, Virginia, and shown on Sheet 4 of 4 of the Plans (the “Planting Plan”). Prior to approval of the first site plan for the Special Exception use, the Applicant shall post a bond with the County in an amount and with surety satisfactory to the County sufficient to cover the cost of implementing the Planting Plan. The Applicant shall ensure that a minimum of eighty (80%) percent of the initial planting is established after two growing seasons through the conduct of an inspection by the Applicant and the County Urban Forester. The bond shall be released following confirmation that a minimum of eighty (80%) percent of the initial planting is established after two growing seasons. Should it be determined that a minimum of eighty (80%) percent survival with uniform distribution is not achieved, a onetime planting to bring the project to full stocking consistent with, the “Planting Plan” shall be conducted by the Applicant and the bond released after compliance herewith has been confirmed by the Zoning Administrator.
3. **Heron Rookery** – No land disturbing or construction activities shall be performed or permitted within the area of the Special Exception during the heron nesting season defined as from February 15 through July 31 of each year. The on-site auxiliary generator may be used only in emergency situations during the said heron nesting season when electrical power has been interrupted. Periodic testing of the on-site auxiliary generator shall not be conducted during the heron nesting season to avoid potential noise impacts to the rookery.
4. **Exterior Lighting** – No permanent exterior lighting shall be permitted within the area of the Special Exception unless directed by the County or unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, State or Federal authorities.

**ATTACHMENT 5**



5. **Noise** - The applicant shall incorporate noise attenuation measures in the design and operation of the facility to ensure that noise levels emanating from equipment on the Property shall comply with a maximum of 75 dBA at the Property lines.
6. **Fuel Tank** - The Applicant shall use non-diesel fuel to power the on-site auxiliary generator. Prior to site plan approval, the Applicant shall coordinate with the County on the selection of the fuel tank to prevent leakage and measures to secure it in the event of flooding. The applicant shall provide fuel spill containment for all fuel storage on the property, and such containment measures shall be detailed on the site plan prior to site plan approval.
7. **Cessation of Use** - The Applicant or its successors shall remove all unused related above ground structures and equipment from the area of the Special Exception, within 90 days of cessation of use or the expiration of the ground lease, whichever occurs first, and restore the site as closely as possible to its natural condition consistent with the Planting Plan.
8. **Advertising**- No commercial advertising shall be permitted on any tower.
9. **Communication Uses**- No antenna, satellite or microwave dish shall be attached to any tower without first obtaining approval of a new Special Exception for such use.

Note: The Applicant has agreed to provide a one-time contribution to the County in the amount of \$1,000.00 for the radio towers, and an additional \$0.10 per square foot of gross floor area of the transmitter building, for volunteer fire and rescue services. The \$1,000.00 contribution will be paid to the County prior to issuance of a building permit for any radio tower. The \$0.10 per square foot of gross floor area of the transmitter building will be paid to the County prior to the issuance of the building permit for the transmitter building. The square footage contribution shall escalate annually from the base year of 1988 and change effectively each January 1<sup>st</sup> thereafter, based on the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics.

## **FINDINGS FOR DENIAL**

### **Commission Permit (CMPT 2009-0002 Potomac Radio)**

1. The proposed AM Radio Transmitter is not consistent with the land use mix or type of uses envisioned for Keynote Employment Areas, as defined in the Revised General Plan. The policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within a Keynote Employment Area.
2. The policies of the Revised General Plan permit only a limited number of uses within the floodplain, including passive and active recreation, road crossings and bridges, utility corridors, pervious paths and trails, and agricultural activities. The proposed AM Radio Transmitter is not one of the types of uses envisioned by the Plan to be located within the stream corridor and more specifically the major floodplain of Broad Run. The environmental policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within the floodplain.

### **Special Exceptions (SPEX 2009-0011 and SPEX 2009-0002 Potomac Radio)**

1. The policies of the Revised General Plan permit only a limited number of uses within the floodplain, including passive and active recreation, road crossings and bridges, utility corridors, pervious paths and trails, and agricultural activities. The proposed AM Radio Transmitter is not one of the types of uses envisioned by the Plan to be located within the stream corridor and more specifically the major floodplain of Broad Run. The environmental policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within the floodplain.
2. The location of the proposed AM Radio Transmitter within the major floodplain of Broad Run does not comply with Sections 740.8(6) Standards for a Special Exception of the 1972 Zoning Ordinance, which states that when considering a proposed special exception use within the floodplain, the proposed use shall be “in harmony with the comprehensive plan”. The environmental policies of the Revised General Plan do not support the location of the proposed AM Radio Transmitter within the floodplain. The application does not comply with the requirements of the 1972 Zoning Ordinance.

<b>ATTACHMENT 6</b>
---------------------